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The Legislative Assembly of
British Columbia

FINANCIAL REVIEW OF STATUTORY OFFICERS OF BRITISH COLUMBIA

SELECT STANDING COMMITTEE ON FINANCE AND
GOVERNMENT SERVICES

REPORT

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102-02758/

December 19, 2001

To the Honourable,
The Legislative Assembly of the
Province of British Columbia
Victoria, British Columbia

Honourable Members:

I have the honour to present herewith the *Second Report* of the Select Standing Committee on Finance and Government Services for the Second Session of the Thirty-Seventh Parliament.

The *Second Report* summarizes the work of the Committee regarding its financial review of the seven statutory officers of the Legislative Assembly.

Respectfully submitted on behalf of the Committee.

Mr. Blair Lekstrom, MLA
Chair

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COMPOSITION OF THE COMMITTEE

MEMBERS

Blair Lekstrom, MLA	Chair	Peace River South
Tony Bhullar, MLA	Deputy Chair	Surrey-Newton
Jeff Bray, MLA		Victoria-Beacon Hill
Ralph Sultan, MLA		West Vancouver-Capilano
Harry Bloy, MLA		Burquitlam
Kevin Krueger, MLA		Kamloops-North Thompson
Barry Penner, MLA		Chilliwack-Kent
Brian Kerr, MLA		Malahat-Juan de Fuca
Lorne Mayencourt, MLA		Vancouver-Burrard
Ida Chong, MLA		Oak Bay-Gordon Head
Joy MacPhail, MLA		Vancouver-Hastings

CLERK TO THE COMMITTEE

Craig James, Clerk of Committees and Clerk Assistant

COMMITTEE RESEARCHERS

Josie Schofield, Research Analyst
Audrey Chan, Research Assistant

TERMS OF REFERENCE

On August 27, 2001, the annual reports, performance plans, budgets and business plans of the following statutory officers were referred to the Select Standing Committee on Finance and Government Services:

a) Auditor General

b) Chief Electoral Officer

c) Child, Youth and Family Advocate

d) Conflict of Interest Commissioner

e) Information and Privacy Commissioner

f) Ombudsman

g) Police Complaint Commissioner

In addition to the powers previously conferred upon the Select Standing Committee on Finance and Government Services, the committee shall be empowered:

(a) to appoint of their number one or more subcommittees and refer to such subcommittees any of the matters referred to the committee;

(b) to sit during a period in which the House is adjourned and during any sitting of the House;

(c) to adjourn from place to place as may be convenient; and

(d) to retain personnel as required to assist the committee;

and shall report to the House as soon as possible, or following any adjournment or at the next following session, as the case may be, to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

COMMITTEE PROCESS

On August 27, 2001, the Legislative Assembly instructed the all-party Select Standing Committee on Finance and Government Services to review the annual reports, performance plans, budgets and business plans of the following statutory officers:

a) Auditor General

b) Chief Electoral Officer

c) Child, Youth and Family Advocate

d) Conflict of Interest Commissioner

e) Information and Privacy Commissioner

f) Ombudsman

g) Police Complaint Commissioner

This type of financial review represents a new development for legislative committees in British Columbia. For the very first time, statutory officers have been asked to report on their offices' operations to MLAs, to whom they are directly accountable. Until the fall of 2001, the practice has been for statutory officers to submit their budget proposals to the Treasury Board, the cabinet committee responsible for budget and management matters.

Before starting the financial review, the Chair of the Finance Committee outlined the committee's expectations for the new budget process in a letter to the statutory officers dated November 20, 2001. Reflecting the new ministry guidelines adopted by government for the core services review, each independent office was asked to submit a three-year service plan and budget request identifying its annual spending requirements (both operating and capital) for the period 2002/03 to 2004/05.

The Finance Committee heard individual presentations by each statutory officer over the course of three public meetings, which were held in Victoria on November 21, 22 and 26, 2001. Members then met on December 5 and 12, 2001 to conduct their deliberations on the content of the report to be presented to the House. Minutes and transcripts of the meetings are available on the Clerk of Committee's web site, at www.legis.gov.bc.ca/cmt/.

The Committee would like to acknowledge the cooperation of the seven statutory officers during the first financial review process. We would also like to thank the Office of the Clerk of Committees for its administrative, procedural and research support, as well as Hansard and the Legislative Library for their services.

INTRODUCTION

Statutory officers of the Legislative Assembly of British Columbia are independent of government and report directly to the House through the Speaker. They occupy a unique position rooted in the tradition of the Westminster model of parliamentary governance. Each statutory officer plays a different role in the process of holding the government accountable to the Legislative Assembly and to the public at large. Collectively, the officers assist the MLAs with the monitoring and assessing of government programs, procedures and performance.

In British Columbia statutory officers serve for fixed terms, which vary according to the statute governing each position. Currently there are seven statutory officers serving the Legislative Assembly of British Columbia:

a) Auditor General

b) Chief Electoral Officer

c) Child, Youth and Family Advocate

d) Conflict of Interest Commissioner

e) Information and Privacy Commissioner

f) Ombudsman

g) Police Complaint Commissioner

The salaries of all seven statutory officers are linked to the salary of the Chief Judge of the Provincial Court of B.C. In addition, the appointment procedures for six of the seven officers are identical: unanimous recommendation of a special legislative committee ratified in the House by a straight majority vote. In the case of the Conflict of Interest Commissioner, ratification of the committee's unanimous recommendation requires a two-thirds majority vote.

The provincial government funds the operation of the independent offices of the Legislative Assembly, which are identified in votes 2 to 8 of the annual estimates. Until November 2001, the statutory officers were required to submit their budget proposals to Treasury Board, the cabinet committee responsible for budget and management matters.

During the past decade, the statutory officers have expressed individual and collective concerns about this practice, claiming that it could potentially compromise their status as independent officers of the Legislative Assembly. For example, in their April 1998 report on fundamental operating principles, they stressed the need for managerial independence:

> *"Officers of the Legislature should have the annual estimates of expenditure for their Offices reviewed and approved by a committee of the Legislative Assembly before they are presented to the Assembly for approval. It is appropriate for government officials to act in an advisory capacity only during the budget preparation and approval process."* (p. 4)

In the report's subsequent discussion of proposed legislation, the statutory officers recommended that their annual estimates for appropriation purposes be presented to the Legislative Assembly Management Committee. (See p. 11)

As it happens, the all-party Select Standing Committee on Finance and Government Services, which was appointed on August 21, 2001, was assigned the task of conducting the first financial review of statutory officers of British Columbia. The original terms of reference instructed the 11 members to

examine the annual reports, performance plans, budgets and business plans of each officer and then to report back to the House.

On November 21, 2001, the Chair sent a letter to each statutory officer outlining the Finance Committee's expectations for the new budget process. Reflecting the new ministry guidelines adopted by government for the core services review, each officer was asked to submit a three-year service plan, and a budget request identifying annual spending requirements (both operating and capital) for the period 2002/03 to 2004/05.

Faced with the prospect of a new financial review process and budget restraint, the seven statutory officers recently agreed to investigate the feasibility of sharing premises and common administrative services, such as human resources and payroll. The terms of reference for their feasibility study were defined and the process of hiring a consultant was underway before the officers met with the Committee in late November 2001.

Before moving to a summary of the financial review of each office, the Committee's general conclusions and recommendations regarding the seven statutory officers are presented.

GENERAL CONCLUSIONS

The Committee anticipates that the seven statutory officers of the Legislative Assembly will each play an important role both during and after the current restructuring of government, a process that is designed to introduce a new model of service delivery. Therefore we believe it is important to maintain their core service functions.

The Committee also thinks it is important for three statutory officers — the Auditor General, the Chief Electoral Officer, the Conflict of Interest Commissioner — to remain in separate locations so as not to compromise their respective mandates. However, we see no reason why consolidation of office space could not occur for the other four statutory officers, who all review complaints as part of their mandates. Besides cost savings in rental charges, sharing space could also streamline the complaints referral process in the offices of the Child, Youth and Family Advocate, the Information and Privacy Commissioner, the Ombudsman, and the Police Complaint Commissioner.

Furthermore, the Committee is convinced that most, if not all, independent offices of the Legislative Assembly could operate more efficiently, as well as provide more effective service delivery, if they implemented shared services operations, as soon as is practicable. In our view, it is not necessary for each office to have its own accounts and payroll department, its own human resources section and its own management.

The Committee recognizes that the budgets of Elections BC, the Conflict of Interest Commissioner, and the Police Complaint Commissioner are "demand driven." Therefore we think their requests for contingency funding for unpredictable events are legitimate ones. Instead of approaching Treasury Board, as in the past, we suggest that where circumstances warrant, a statutory officer who needs to access the money set aside for contingencies could simply notify the Chair of the Finance Committee in writing, indicating the reason(s) for using this funding.

The Committee is aware that the first financial review of B.C. statutory officers has raised a few procedural questions that need to be clarified for future reviews. We have also been struck by the lack of uniformity in the documents submitted by the statutory officers — particularly, the variation in the format of their budget proposals.

GENERAL RECOMMENDATIONS

The Committee recommends:

- **That the existing complement of seven specialized statutory officers should be maintained.**
- **That consolidation of office space should be a priority for four statutory officers of the Legislative Assembly — the Child, Youth and Family Advocate, the Information and Privacy Commissioner, the Ombudsman, the Police Complaint Commissioner — in order to reduce their operating expenses and improve front-line service delivery.**
- **That all statutory officers of the Legislative Assembly should look seriously at implementing a common set of shared services in the areas of finance, human resources and information technology, as well as shared management, so as to achieve cost savings in their budgets for the 2003/04 and 2004/05 fiscal years.**
- **That the Legislature should clarify the role of the Select Standing Committee on Finance and Government Services in reviewing the service plans and budget proposals of statutory officers.**
- **That the Legislature should provide clear guidelines to statutory officers regarding the preparation of annual service plan reports, service plans and budget proposals for the next financial review process.**

AUDITOR GENERAL OF BRITISH COLUMBIA

"We have designed our work program for 2002-2003 to provide legislators with the assurances and advice they need to ensure a rigorous public scrutiny of government performance. Such scrutiny is fundamental to public trust and confidence in our institutions of government." (Wayne Strelioff, Auditor General)

BACKGROUND

The Auditor General provides independent assessments of the accounts and financial records of the government, and issues reports to the Legislative Assembly on the management of public funds and the operations of government. The Auditor General also evaluates the reliability of financial reporting, and can recommend ways to improve public sector administration.

The current Auditor General of British Columbia, Wayne Strelioff, was appointed on May 1, 2000 for a six-year, renewable term. His predecessors, who were also appointed under the 1976 *Auditor General Act,* were George L. Morfitt (1988-2000) and Erma Morrison (1977-1986). Much earlier, William Allison was appointed as the province's first Auditor General and served during the1913-17 period.

The Office of the Auditor General strives to ensure that legislators and the public receive the best information possible for assessing the performance of government. The Auditor General is assisted by a staff of 92 FTEs. The office's four lines of business are:

- attesting to the reliability of government financial statements;
- assessing the quality of government service plans and reports;
- examining how government manages its key risks; and
- supporting legislators in the use of government performance information.

COMMITTEE REVIEW

The Select Standing Committee on Finance and Government Services met to conduct a financial review of the Office of the Auditor General on November 21, 2001. The witnesses who appeared before the Committee were Wayne Strelioff, Auditor General of British Columbia; and Peter Gregory, Deputy Auditor General.

ANNUAL REPORT

Members asked the Office of the Auditor General to update its organization chart on page 14 of the 2001/02 report. They suggested identifying individual positions rather than just naming the employees in the six sector groups, so that the managers in the organization are clearly identified. Five of these groups reflect major sectors of government (education, finance and transportation, health, natural resources, protection), and the sixth sector (corporate services) provides staff support and technical services to the office.

SERVICE PLAN AND BUDGET PROPOSAL, 2002 – 2005

Service Plan

Members were informed by the Auditor General that he plans to table a three-year service plan in February 2002, once the Finance Committee has decided what level of funding would be available for his office. This plan will include more detailed information about the specific work the office will be undertaking and how its resources will be used.

Contingency funding

Members were receptive to the business case made by the Auditor General for contingency funding to meet three emerging challenges in the 2002/03 fiscal year: 1) implementing a complete financial planning and reporting framework; 2) providing assurance on government service plan reports; and 3) monitoring changes in how government delivers programs and services — in particular, whether the non-governmental organizations, which government is planning to assign more responsibility to, are working effectively in the context of their own service plans.

Members, though, expressed reservations about the Auditor General's request for additional funding to audit the budget and the government's quarterly forecasts prior to auditing the province's public accounts. They wondered how practical it would be to have another checkpoint in the already complex budget-making process, and whether the Auditor General's participation would compromise his status as an independent statutory officer. They also thought the timing might be inappropriate in the current environment, when so many changes are occurring in service delivery.

Recoveries

Members asked about the office's audit work carried out on a cost recovery basis. In response, the Auditor General explained that the office charges for assurances and advisory services requested by government and its organizations. Actual recoveries and actual costs of professional services fluctuate from year to year, depending on the workload. The Auditor General requested that the recoveries item and an amount for capital expenditures be included in the annual estimates.

CONCLUSIONS

The Committee thinks the Auditor General performs a very important function as an independent watchdog scrutinizing the spending of taxpayers' money. We believe there is a strong business case for increasing the Auditor General's budget in 2002/03 to tackle the emerging challenges resulting from the restructuring of government service delivery. In fiscal 2003/04 and 2004/05, though, we expect the office to achieve cost savings in its core budget, via sharing staff support and technical services with the other statutory officers.

RECOMMENDATIONS

The Committee recommends:

- **That the budget for the Auditor General should be increased to $8,317,000 for the 2002/03 fiscal year.**
- **That the Auditor General's core budget of $8,317,000 should be reduced by 5 percent in 2003/04, and by 10 percent in 2004/05.**
- **That the Auditor General should receive a capital budget of $190,000 in 2002/03; $193,000 in 2003/04; and $203,000 in 2004/05.**
- **That the annual estimates for the Auditor General should include the office's anticipated amount for recoveries ($1,200,000 per fiscal year) and its capital expenditures.**

CHIEF ELECTORAL OFFICER, PROVINCE OF BRITISH COLUMBIA

"The environment we work in is largely one of uncertainty. As Mr. Patterson mentioned, certainly having a fixed general election date helps, but there are still a broad range of activities that our clients choose to participate in or not that affect our work dramatically from day to day." (Linda M. Johnson, Deputy Chief Electoral Officer)

BACKGROUND

The Chief Electoral Officer is responsible for the impartial administration of provincial general elections, by-elections, referendums and plebiscites, and citizen-initiated recalls and initiatives. Another function of the Chief Electoral Officer is to ensure compliance with electoral finance reporting requirements by political parties and constituency associations.

Elections BC is also responsible for enumeration and the maintenance of the provincial voters list, implementation of the redistribution of the electoral districts and voting areas, and voter education regarding voter registration and electoral processes. In the May 2001 provincial general election, the number of electoral districts increased from 75 to 79, and the voter turnout rate was 71.2 percent.

The current Chief Electoral Officer, Robert A. Patterson, has served in this capacity since 1995. His appointment was made under the revised *Election Act*, which transferred the position from a ministry branch to an independent office of the Legislature.

Elections BC has a permanent staff of 48 FTEs provincewide. As well, the office appoints 79 appointed district electoral officers and 84 deputy district electoral officers, and hires 30,000 additional temporary employees on general voting day.

COMMITTEE REVIEW

The Select Standing Committee on Finance and Government Services met to conduct a financial review of Elections BC on November 21, 2001. The witnesses who appeared before the Committee were Robert A. (Bob) Patterson, Chief Electoral Officer; Linda M. Johnson, Deputy Chief Electoral Officer; and M. Nolan Western, Director of Electoral Finance.

ANNUAL REPORT

Members complimented Elections BC for their capable administration of the recent provincial election. They asked the Chief Electoral Officer to report on any errors his staff identify in the post-mortem process and how the office plans to address them. This information would be useful to include next year's annual report in order to enhance the office's public credibility.

SERVICE PLAN AND BUDGET PROPOSAL, 2002-2005

Consolidation of Offices

When reviewing the office's organizational chart, the Committee learned that Elections BC offices in Kelowna, Langley (warehouse site), Vancouver and Victoria are in the process of being consolidated into a single location (Victoria). This planned consolidation is reflected in the office's capital budget for 2002/03.

Contingency Funding

Members noted that the proposed operating budgets for the next three fiscal years include expenditures for statutory activities that do not necessarily occur every year. The witnesses explained that their budget projections are based on past experience, because the office often faces unpredictable external budget pressures beyond its control – for example, by-elections, recall petitions or initiative petitions. Members suggested that such contingency funding be separated from the baseline budget of the office for purposes of clarification.

Costs of Statutory Activities

Members asked whether cost efficiencies could be realized in some of the office's other statutory activities — for example, enumeration and maintenance of the provincial voters list. They were informed by Elections BC that cost savings could be achieved if the office could access the federal voters list. However, there is an obstacle to access. The federal voters list can only be used for electoral purposes, whereas the B.C. voters list is also used for jury selection, as there is no other resource available to the sheriff's department. To find a solution, Elections BC is preparing a briefing note, in consultation with Elections Canada and BC Court Services.

CONCLUSIONS

The Committee recognizes that Elections BC has a high level of public credibility and administers the *Election Act* in a capable manner. We have a concern, though, about the office's budget proposal for the next three fiscal years. The proposed budgets do not reflect clearly the actual operating expenses of the office, due to the inclusion of contingency items for "anticipated events" that may occur sometime in the future rather than in the fiscal year specified.

RECOMMENDATIONS

The Committee recommends:

- **That the annual baseline budget for Elections BC should be defined as $10,012,000 for the next three fiscal years (2002/03 – 2004/05). This amount is arrived at by taking the office's 2001/02 budget of $33,581,000 and deducting general election expenses ($23,035,000) and three contingency items: by-election ($300,000), initiative petition ($224,000), recall petition ($10,000).**
- **That the baseline budget of Elections BC of $10,012,000 should be reduced by 15 percent in 2002/03; by 15 percent in 2003/04; and by 15 percent in 2004/05. To achieve cost efficiencies, Elections BC should review its proposed expenditures for event management infrastructure and for the following statutory activities listed in its budget proposal: geography, redistribution, special projects and voter education.**
- **That Elections BC should receive contingency funding during the 2002/03 fiscal year for the referendum on principles for treaty negotiations. The anticipated cost is $18 million for a ballot-box vote, or $9 million for a mail-in ballot. Elections BC will also need additional contingency funding if a by-election, initiative petition or recall petition occurs in the next fiscal year.**
- **That Elections BC should receive a capital budget of $2,545,000 for 2002/03; $1,005,000 for 2003/04; and $1,005,000 for 2004/05.**

CHILD, YOUTH AND FAMILY ADVOCATE OF BRITISH COLUMBIA

"We receive approximately 3,000 calls each year from or about children and youth who have needs beyond the capacity of their family, extended family or local community. We do not have the resources to advocate on behalf of them individually — nor do we believe we should. As we outlined in our service plan, our work is about building capacity — in individuals, communities and service systems — and promoting self-advocacy." (Laverne MacFadden, Acting Child, Youth and Family Advocate)

BACKGROUND

The role of the Child, Youth and Family Advocate is to provide an independent voice for children and youth who require government services provided by the Ministry of Children and Family Development and other designated agencies. The Advocate strives to ensure that the rights and interests of children, youth and their families relating to these services are protected and advanced, and that children and youth have access to appropriate and effective review and appeal procedures.

Another role of the Advocate is to support, promote and coordinate the establishment of advocacy services in local communities — via regular community visits, outreach activities, and training programs for individuals and groups. The Advocate's office also provides information to government and the public about the issues affecting children and youth.

The province's first Child, Youth and Family Advocate, Joyce Preston, was appointed in May 1995 for a six-year term. In May 2001, Laverne MacFadden was appointed the Acting Child, Youth and Family Advocate for a one-year, renewable term.

Since becoming operational in 1995, the Vancouver-based Office of the Child, Youth and Family Advocate has received over 13,000 calls from or about children and youth. Approximately 20 percent of these calls are directly from young people themselves.

For the most part, the office staff of 15 FTEs serves youth aged 18 and under; half of these young people are living in government care and about 14 percent are Aboriginal. The office's mandate also extends in some cases to young people aged 19 to 24.

COMMITTEE REVIEW

The Select Standing Committee on Finance and Government Services met to conduct a financial review of the Office of the Child, Youth and Family Advocate on November 22, 2001. The witnesses who appeared before the Committee were Laverne MacFadden, Acting Advocate; Ian Mass, Deputy Advocate; and Lynell J. Anderson, Manager of Finance and Support Services.

ANNUAL REPORT

Members reviewed the office's annual report for the year 2000 and have no matters to bring to the attention of the House.

SERVICE PLAN AND BUDGET PROPOSAL, 2002-2005

Office's Mandate

Members noted that there is some overlap in the core service functions of the Office of the Child, Youth and Family Advocate and the Office of the Ombudsman, which also has a child and youth

team. In response, the Acting Advocate explained that her office's mandate focuses on promoting the interests of the child in the provision of government services rather than on administrative fairness. In this context, local advocacy development is a priority for the office.

Organizational Structure

Members had concerns about the "top heavy" organizational structure, particularly since the office already contracts with the Ministry of Management Services for accounts and payroll transactions, and other services (human resources, information technology). Out of 15 FTEs, there are six management positions, including two vacant deputy advocate positions, and only three front-line officers. Most of the other six employees provide administrative support.

Performance Measures

Members noted that only outputs are specified in the service plan. They suggested that the office develop performance measures for outcomes – for example, attitudinal change within ministries regarding the office's core activities related to systemic advocacy. In response, the Acting Advocate stated that budgetary resources have been committed for an evaluation process.

CONCLUSIONS

The Committee believes it is important for children and youth under 19 to have an independent champion, if their parents are unable to advocate on their behalf. We are concerned, however, that the office's mandate — individual and systemic advocacy — is being interpreted too broadly. In our view, the office needs to become more child-focused in its approach.

The Committee also thinks that significant cost savings, as well as improvements in service delivery, could be achieved if the Advocate shared premises, services and management with the other statutory officers of the Legislative Assembly.

RECOMMENDATIONS

The Committee recommends:

- **That the Child, Youth and Family Advocate should adopt a more child-focused approach in carrying out its mandate, by ensuring that, first and foremost, children and youth under 19 have a champion and access to appropriate review and appeal procedures.**
- **That the Advocate's existing baseline budget of $1,656,113 should be reduced by 10 percent in 2002/03; by 15 percent in 2003/04; and by 20 percent in 2004/05. The cost efficiencies should all occur at the administrative level, so that front-line service delivery to children is not affected by budget reductions in the next three years.**
- **That the Advocate should receive an annual capital budget of $25,000 for the next three fiscal years (2002/03 to 2004/05).**

CONFLICT OF INTEREST COMMISSIONER

"We are the smallest, cheapest, most inoffensive and most modest office in government."
(Hon. H.A.D. Oliver, QC, Conflict of Interest Commissioner)

BACKGROUND

The position of Conflict of Interest Commissioner was established in 1990 with the goal of improving and maintaining public confidence in the provincial system of government. Unlike the other statutory officers, the Commissioner performs his duties as a part-time officer of the Legislative Assembly.

The Commissioner performs three separate but related roles. First, the Commissioner acts as an adviser to Members of the Legislative Assembly. Secondly, the Commissioner annually prepares and files an annual public disclosure statement with respect to the financial affairs of each Member. Thirdly, the Commissioner undertakes inquiries into alleged contraventions of the *Members' Conflict of Interest Act* and upon request, gives an opinion respecting compliance with the Act. Once the investigation is completed, the Commissioner reports to the Legislature and where there is substance to the allegations, recommends a suitable penalty.

In addition, the Commissioner engages in public education activities, and maintains contact with a variety of ethics offices and standards-of-conduct commissions in other parts of the world for the mutual exchange of information and experiences.

The current Conflict of Interest Commissioner, Hon. H.A.D. Oliver, QC, was appointed in 1997 for a five-year, renewable term. His predecessor, Hon. E.N. (Ted) Hughes, served as the province's first Commissioner from 1991 to 1997.

The Office of the Conflict of Interest Commissioner has a staff complement of 1.5 FTEs. In 1999/00, the office received approximately 200 calls, including some "non-jurisdictional" inquiries from members of the public.

COMMITTEE REVIEW

The Select Standing Committee on Finance and Government Services met to conduct a financial review of the Office of the Conflict of Interest Commissioner on November 22, 2001. The witnesses who appeared before the Committee were Hon. H.A.D. Oliver, QC, Conflict of Interest Commissioner; Betsi Curdie, Administrative Research Officer; and Peter Bray, Legislative Comptroller.

ANNUAL REPORT

Members reviewed the Commissioner's un-tabled annual report for the year 2000, and have no matters to bring to the attention of the House.

SERVICE PLAN AND BUDGET PROPOSAL, 2001-2005

Budget Proposal

The Conflict of Interest Commissioner submitted a budget proposal for only the 2002/03 fiscal year. He informed the Committee that budget forecasting for a demand-driven operation like his office is "extremely difficult."

Contracted Services

Members learned that the Commissioner utilizes the services of the Legislative Comptroller to meet his office's financial requirements.

The Commissioner stressed that other functions — human resources, information technology and administration — should continue to be performed by his own staff, due to the highly confidential nature of the information processed by his small office. He also informed the Committee that the recent addition of a half-time administrative research officer effectively offsets the expenses previously incurred for legal consultation, by now allowing the Commissioner to conduct some of his investigations and research in-house.

Document Disposal

Members were receptive to the Commissioner's concerns about the accumulation of old disclosure forms in a small office with limited storage space. The Commissioner noted that in carrying out his duties, he has not had to refer to confidential filings over four years old. However, because the current legislation does not provide him with the authority to dispose of files, he would likely require additional storage space soon.

Filing of Disclosure Forms

Members voiced some concerns about the cumbersome and inefficient procedure for filing disclosure forms. They learned that various projects are to be undertaken by the Commissioner's office, including the creation of a web site, the production of a member's conflict-of-interest handbook, the modification and simplification of forms, and the possibility of making on-line confidential filing available to MLAs.

CONCLUSIONS

The Committee considers the organizational structure of the Commissioner's office and his budgetary requirements to be appropriate and cost effective. At the same time, we recognize that the office might require contingency funding in the future, in the event of a high-profile investigation.

The Committee thinks there is a strong case for the Commissioner having the statutory authority to dispose of old files.

To improve the disclosure process, we suggest that the Commissioner's office consider implementing an on-line filing and storage system for MLAs.

RECOMMENDATIONS

Your Committee recommends:

- **That the Conflict of Interest Commissioner should receive an operating budget of $292,000 for the 2002/03 fiscal year.**
- **That the Conflict of Interest Commissioner should report back to the Select Standing Committee on Finance and Government Services by January 31, 2002, with specific recommendations for legislative amendments regarding record retention and file disposition. The Commissioner's recommendations should address the issue of the time period for record retention and whether a distinction should be made between the records of executive council members and Private Members.**
- **That the guidelines for MLAs' disclosure requirements should be clarified and made available on the Office of the Conflict of Interest Commissioner's new web site, and that the feasibility of electronic filing and storage of disclosure forms be explored.**

INFORMATION AND PRIVACY COMMISSIONER FOR BRITISH COLUMBIA

> *"Independent oversight is really the function of my office. I think it's very important to underscore that we are reactive by design. People come to us with access-to-information appeals because they're unhappy with a decision that has been made. We must provide that service."* (David Loukidelis, Information and Privacy Commissioner)

BACKGROUND

The Information and Privacy Commissioner is responsible for monitoring and enforcing compliance with the 1992 *Freedom of Information and Protection of Privacy Act*. This law has a dual purpose: to make public bodies more accountable to the public and to protect personal privacy.

In British Columbia the statutory right of access to records extends to 1,800 public bodies — the broadest range of any equivalent jurisdiction in Canada. These bodies include provincial ministries and agencies, Crown corporations, local governments, school boards, colleges and universities, health care bodies, and self-regulating professions.

Under the Act, anyone who has sought access to their records can appeal to the Information and Privacy Commissioner any action, decision or failure to act on the part of a public body. The commissioner has the power to issue binding orders, which the government must comply with in 30 days.

The Act also requires public bodies to follow certain rules respecting the collection, use and disclosure of personal information. Any individual who believes that a public body has broken one of the privacy rules can ask the Commissioner to review the decision.

The current Information and Privacy Commissioner, David Loukidelis, was appointed in August 1999 for a single six-year term. He replaced David Flaherty, who served from July 1993 to 1999.

The Office of the Information and Privacy Commissioner employs 22 FTEs who provide direct services to the public. The office's core service functions are:

- access appeals;
- privacy complaints; and
- public education.

By November 15, 2001, the office had already processed 858 requests for review, as compared with 823 for the 2000 calendar year. The number of complaints regarding the collection, use or disclosure of personal information averages about 100 a year.

COMMITTEE REVIEW

The Select Standing Committee on Finance and Government Services met to conduct a financial review of the Office of the Information and Privacy Commissioner on November 26, 2001. The witnesses were David Loukidelis, Information and Privacy Commissioner; Lorraine A. Dixon, Executive Director; and Linda Calver, Director, Finance and Administration.

ANNUAL REPORT

Members were pleased with the quality assurance procedures that the Office of the Information and Privacy Commissioner is in the process of developing. For example, the Commissioner informed the Members that the 2000 report has been printed more cheaply and in a smaller quantity than the 1999 one, and that the report year now ends December 31. Future annual reports will be produced in-house to save money and completed before the next year's second quarter.

SERVICE PLAN AND BUDGET PROPOSAL, 2002 - 2005

Contracted Services

Members inquired about the office's use of contracted services. In response, the Information and Privacy Commissioner stated that the office uses the provincial government's corporate human resource information and payroll (CHIPS) system and its corporate accounting system, and that it contracts with the information technology services division (ITSD) for e-mail and Internet access. The office also contracts human resources and systems support on an as-needed basis.

Cost Pressures

Members were told that the legislation governing the operation of the Commissioner's office is in fact contributing to cost pressures. For example, if a person lodging an appeal refuses to settle the matter, he or she can force it to go to a formal inquiry process. The legislation also now requires the Commissioner to issue a written decision, once the inquiry has been held. In addition, the legislation requires public bodies to respond to all access requests, including those from "frequent flyers," people who access information as a hobby

Besides the costs imposed by legislation, the Committee also learned that the office is faced with higher salary and wage costs in 2002/03, plus a rent increase for the space it leases from BCBC. Once the current lease expires in 2003, the office anticipates giving up some space, or else sharing accommodation with other independent offices of the Legislative Assembly.

Cost Recovery

Members were informed that currently the Information and Privacy Commissioner has no ability to levy fees of any kind or to recover costs for the time and resources spent on appeals and orders. The legislation also prohibits a public body from charging for the first three hours of search time or imposing a fee for access to personal information. The Commissioner informed the Committee that the idea of charging fees for taking appeals to his office was broached in 1999 during the legislative review of the *Freedom of Information and Protection of Privacy Act*, but the special committee recommended no change in the original fee schedule.

CONCLUSIONS

The Committee recognizes that the Information and Privacy Commissioner performs an important function. Independent oversight of administrative decisions is essential to maintain public confidence in government institutions. With the trend to smaller government and a new service delivery model, though, we question whether the broad scope of the Commissioner's jurisdictional authority needs to be maintained. We also think that the Commissioner's office could realize significant cost savings by sharing premises, services and management.

RECOMMENDATIONS

The Committee recommends:

- **That the Information and Privacy Commissioner's existing baseline budget of $2,359,000 should be reduced by 10 percent in 2002/03; by 10 percent in 2003/04; and by 15 percent in 2004/05.**
- **That the Information and Privacy Commissioner should receive an annual capital budget of $15,000 for the next three fiscal years (2002/03 – 2004/05).**

OMBUDSMAN, PROVINCE OF BRITISH COLUMBIA

"Our office has the broadest jurisdiction of any ombudsman in North America and, in my reading of various annual reports, I would suggest the broadest jurisdiction of any ombudsman's office in the world." (Howard L. Kushner, Ombudsman)

BACKGROUND

The Ombudsman is an independent, impartial investigator of complaints about government administrative unfairness who can, when appropriate, recommend changes to a government practice, policy or decision to resolve the unfairness. The Ombudsman, however, cannot order an authority to change its actions or its decisions.

In British Columbia the Office of the Ombudsman has jurisdiction over a wide range of public authorities — 3,000 separate bodies, in total. The Office can investigate complaints of unfair administrative practices within government ministries, Crown corporations and provincial boards and commissions — the traditional jurisdiction of provincial ombudsmen offices. In addition, during the 1992-95 period, the Ombudsman's oversight responsibility was extended to cover schools and school districts, colleges and universities, hospitals and regional health authorities, municipal and regional governments, and self-regulating professional bodies.

The Office of the Ombudsman became operational in October 1979. During the first 20 years, three British Columbians served in the position (Karl Friedmann, 1979-85; Stephen Owen, 1986-92; Dulcie McCallum, 1992 -99). The current Ombudsman, Howard Kushner, was appointed in June 1999 for a six-year term.

The office receives about 11,000 complaints and inquiries each year. The intake team handles 75 percent of these files, often by referring complaints to other agencies; and the investigators process the 3,000 complaints that fall within the office's jurisdiction.

COMMITTEE REVIEW

The Select Standing Committee on Finance and Government Services met to conduct a financial review of the Office of the Ombudsman on November 21, 2001. The witnesses who appeared before the Committee were Howard L. Kushner, Ombudsman; Brent Parfitt, Deputy Ombudsman; and Lanny T. Hubbard, Director of Corporate Services.

ANNUAL REPORT

Members expressed concern about the office's delay in producing its 2000 annual report, pointing out that timely publication is an important performance measure. The length of the report and the resulting higher printing costs, compared with 1999, also prompted questions from Members.

The Ombudsman apologized for the delay in producing the 2000 Annual Report and announced that future annual reports would be published no later than three months after the end of the calendar year. He also stressed how important the annual report is for publicizing his work, describing the document as "the primary mechanism" for making the public and legislators aware of what his office is doing.

During their review, Members inquired about the office's use of other performance measures. The Ombudsman explained that from day one the office has reported statistics on annual volume of complaints, number of intakes, number of files closed, etc. Since his appointment in 1999, the

Office has also begun to develop performance measures, targets and outcomes, which are currently being reviewed by staff.

In terms of specific measures, Members suggested that the Office of the Ombudsman could do more explicit tracking of those recommendations that have been acted upon by public authorities, especially in regard to systemic investigations. The Ombudsman acknowledged the need for greater clarity in defining the Office's high success rate — namely, identifying how many changes to administrative practices, policies and procedures have in fact occurred. He also informed the Committee that he was considering reporting separately on systemic investigations; however, substantial resources are needed to produce reports like the recent investigation of Forest Renewal BC.

SERVICE PLAN AND BUDGET PROPOSAL, 2002 – 2005

Organizational structure

Members commented that the internal structure of the Office seemed "a little top heavy" on the management side. In response, the Ombudsman explained that more than half of the staff are in fact involved with investigating complaints, if the intake team of 7.6 FTEs is included with the 26.3 FTEs in the five sectoral teams. He acknowledged that the administration team, as well as the in-house legal counsel, could be shared in the future with other independent offices of the Legislative Assembly.

Operating budget

The Ombudsman informed the Committee that if his budget did not increase next year, the office would have to eliminate the positions of 3 FTEs among the administrative support staff. Furthermore, if the budget was cut by 10 percent, the office's capacity to deliver services would be affected and the scope of its jurisdictional authority may have to be scaled back to the pre-1993 focus on provincial institutions.

Cost Recovery

Members were informed that the Office of the Ombudsman receives some revenue from the sale of its case tracker software, a sophisticated computer system. Between 1996 and 2001 total sales were in the $100,000 to $120,000 range. However, the Purchasing Commission, via its intellectual property program, recoups 75 percent of the revenue from individual sales for the consolidated revenue fund.

CONCLUSIONS

The Committee believes that the Ombudsman performs a valuable function in investigating complaints from individual citizens who believe that a public body has acted unfairly. However, as the province is moving towards smaller government, we anticipate that the Ombudsman's workload will shrink commensurately. We also believe significant cost savings could also be achieved if the Ombudsman shared premises, services and management with other statutory officers of the Legislative Assembly.

RECOMMENDATIONS

The Committee recommends:

- **That the government should consider changing the legislation governing the Office of the Ombudsman to restrict the scope of its oversight responsibility to provincial institutions.**
- **That the Ombudsman's existing baseline budget of $4,766,000 should be reduced by 5 percent in 2002/03; by 10 percent in 2003/04; and by 20 percent in 2004/05.**
- **That the Ombudsman should receive a capital budget of $59,000 in 2002/03; $62,000 in 2003/04; and $65,000 in 2004/05.**

POLICE COMPLAINT COMMISSIONER, PROVINCE OF BRITISH COLUMBIA

> *"Basically, the position of the Police Complaint Commissioner is that of a police ombudsman – that is, the Commissioner is to have oversight responsibility at all stages of the filing, characterization and investigation of complaints."* (Don E. Morrison, Police Complaint Commissioner)

BACKGROUND

The Police Complaint Commissioner provides independent civilian oversight of all aspects of an investigation into complaints made about BC's 12 municipal police departments and the 2000-plus police officers that provide the service. Under *Police Act* regulations, the Commissioner also oversees the handling of complaints against three First Nations police services. However, complaints against the RCMP are outside the Commissioner's mandate.

The independent office of the Police Complaint Commissioner was established in July 1998, under Part 9 of the *Police Act*. This statute sets out the powers and duties of the Commissioner, and requires a legislative review of the office three years from the date of its establishment. This review is currently being undertaken by the Special Committee to Review the Police Complaint Process, which is required to report to the Legislative Assembly by August 2002.

The mandate of the Police Complaint Commissioner is to ensure that investigations into complaints against the police are conducted in a fair and timely way. The Commissioner and his staff do not conduct initial investigations; however, complainants dissatisfied with the findings of an investigation may appeal to the Commissioner. The Commissioner may also order a public hearing before a provincial court judge if it is in the public interest.

Don E. Morrison was appointed as the province's first Police Complaint Commissioner on April 7, 1998 for a six-year term. He has a staff of 9 FTEs, who handle 400 complaints a year.

COMMITTEE REVIEW

The Select Standing Committee on Finance and Government Services met to conduct a financial review of the Office of the Police Complaint Commissioner on November 26, 2001. The witnesses who appeared before the Committee were Don E. Morrison, Police Complaint Commissioner; and Barbara Murphy, Deputy Police Complaint Commissioner.

ANNUAL REPORT

The Commissioner did not submit an annual report to the Committee for review.

SERVICE PLAN AND BUDGET PROPOSAL, 2002-2005

Office's Mandate

Members had reservations about the office taking a proactive role, which is designed to prevent incidents between police and complainants. They questioned whether promotion of the office's services via public education programs is really part of the Police Complaint Commissioner's mandate, especially when the office is facing an operational and staffing shortfall.

Members also voiced concerns about the office's hierarchical structure. They indicated that they would prefer to see more resources targeted for front-line investigations and less for administration and management.

Cost Pressures

Members learned that the office's current financial crisis is due mainly to the Commissioner's lack of control over the costs associated with public hearings into police conduct, such as the one related to the "riot at the Hyatt." They observed, however, that the 2002/03 budget proposal does not provide a clear picture of the cost pressures anticipated by the office. Furthermore, the Commissioner did not submit any budgetary information for the following two fiscal years, as requested.

Cost Recovery

Members asked whether the office has ever considered using cost recovery to help stabilize its financial situation. In response, the Commissioner noted that Quebec is the only jurisdiction in Canada that currently makes statutory provision for police departments to bear the costs of investigations and public hearings.

Performance Measures

While reviewing the service plan, Members asked if the office has developed any quantitative baseline for measuring performance. The Commissioner advised that performance measurement targets are currently under development.

CONCLUSIONS

The Committee believes the Police Complaint Commissioner performs a useful role. We think, though, that the office needs to have a more reactive, complaint-driven focus in carrying out its mandate. As well, staff resources could be utilized primarily for investigating complaints, if the office shared premises, services and management with other statutory officers of the Assembly.

The Committee is sympathetic to the fact that budget forecasting for the Office of the Police Commissioner poses a challenge. As the Commissioner has a statutory obligation to order public hearings in the public interest, he has no control or discretion over the duration of the hearing or the costs incurred, once a hearing has been ordered.

However, we are concerned about the office's dependency on contingency funding. In our view, the Commissioner should consider stabilizing his office's core operating budget by actively exploring the feasibility of recovering costs from municipal police departments, in cases where complaints are justified.

RECOMMENDATIONS

Your Committee recommends:

- **That the Office of the Police Complaint Commissioner should become a complaint-driven organization in order to maintain manageable caseloads.**
- **That the Police Complaint Commissioner's existing baseline budget of $1,159,000 should be reduced by 5 percent in 2002/03; by 10 percent in 2003/04; and by 15 percent in 2004/05. The cost savings should occur at the management level, so that the office's front-line service delivery is not affected by budget reductions in the next three years.**
- **That the Police Complaint Commissioner be enabled to adopt cost recovery measures in order to stabilize the operating budget for his office.**
- **That the Police Complaint Commissioner should receive a capital budget of $25,000 for the fiscal year 2002/03.**

OTHER MATTERS

On December 12, 200, the Select Standing Committee on Finance and Government Services reviewed a request for contingency funding from the Police Complaint Commissioner, which was originally submitted to the Speaker in a letter dated November 30, 2001. The Commissioner asked for funding in the amount of $264,975 for 2001/02 to address his office's current staffing and operational shortfall. After considering the request, the Committee recommends:

That the Office of the Police Complaint Commissioner should receive contingency funding in the amount of $264,975 for the 2001/02 fiscal year.

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